No 2. upon a submission of the said parties, the LORDS found, that the hail sentence fell and was null, in respect of iniquity committed by the said arbiters, and decreet given *ultra vires compromissi*.

Fol. Dic. v. 1. *p.* 462. *Haddington, MS. No* 512.

1616. *July* 25. A. *against* B.

No 3.

IN an action of reduction of a decreet-arbitral, the LORDS found, that one or two heads being *ultra vires*, the rest should fall.

Item, In the same cause, the LORDS refused to admit the exception founded upon consent of party, to be proved by the Judge, and witnesses inserted.

Fol. Dic. v. 1. *p.* 463. *Kerse, MS. fol.* 180.

1630. *March* 20. JOHN STARK *against* THUMB.

No 4.
A decree-arbitral was sustained, tho' the arbiters remitted a point in dispute to the determination of other arbiters. The point remitted was not specially mentioned in the submission.

CERTAIN special controversies betwixt these parties being particularly expressed, and therewith all other questions betwixt them generally, whatsomever they were, being submitted to arbiters; who having decerned, the decreet was quarrelled, by way of suspension, as null; because, in one article of the decreet, the Judges had referred the payment of the taxation, whether of the parties should pay the same, to the judgment of two Lawyers, one to be chosen by each party; by the which reference, they not determining upon one article controverted, the whole rest of the decreet was null; for the suspender *alleged*, That the Judge not deciding in all the questions, but remitting one to others, which they could not do, after they had accepted on them the decision of all, thereby the decreet is null; for the which he *alleged*, *L.* 19. *D. De Receptis*. And the other party *alleging*, That the decreet could not be null in all the articles, albeit it were yielded, that it were null in that head, because, *utile per inutile non vitiatur*, especially *ubi capita sententiæ sunt separabilia*, as in this case. THE LORDS found the foresaid article of the decreet, remitting to the Lawyers, to determine on the taxation, rendered not the whole decreet null; because, though the civil law and reason declare such clauses to make the whole decreet null, where any article specified in the submission particularly accepted, to be decided by the arbiters, is not decided, but referred to others, *quo casu nulla est sententia*, except by the power of the submission the Judge has warrant from the party, so to refer the same to others, et pro hoc facit, L. 32. § 16. D. De Receptis, &c. Vid. L. 19. § 1. et L. 21. § 12. D. eod. tit.; ex quibus scire licet an sententia lata super quibusdam rebus compromissis, super aliis autem non lata, valeat in iis, supra quibus lata est; but in this case question-

ed, viz. anent the taxation, it was not specially submitted, but mentioned in a clause of the decreet, so that the law militated not against the same: Likeas, the party renounced simply that clause, and all interest and benefit which he could have by virtue of the same, or for relief of any taxation, so that there needed no sentence thereon, albeit it had been specially set down in the submission, as it was not, and, therefore, they decerned as said is. No 4.

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 463. Durie, p. 511.

1702. *December* 25. PATRICK CRAWFURD *against* HUGH HAMILTON, *&c.*

THERE being a decreet-arbitral pronounced betwixt Patrick Crawfurd, merchant, Hugh Hamilton, Campbell of Glasnock, and Hugh Gordon; and Patrick Crawfurd finding himself enormly lesed thereby, in ordaining him to pay L. 10,000 for lands that were not worth 10,000 merks; and that now, by the late act of regulations, 1695, decreets-arbitral may not be quarrelled on lesion and iniquity, but allenarly in corruption and falsehood; he raises a reduction of it on this reason, that the decreet was intrinsically null, as *ultra vires compromissi*, he having only submitted some particular claims, and yet they had determined upon the right of lands, and decerned each party to give general mutual discharges to the other. *Answered*, 1*mo*, The arbiters have noways transgressed the limits of their power, for the general discharges must be limited, and restricted to the *subjecta materia* of the claims submitted, and can go no farther. 2*do*, *Esto* they had exceeded their power, yet that *excessus* can never annul the decreet-arbitral *in toto*, but only be a ground to redress and reform what they determined beyond warrant; even as in decreets *in foro*, nullities do not lay them open, farther than to rectify the error complained on, all the rest standing firm and fast; and, by the article relating to decreets-arbitral, they are declared irreducible upon any ground or reason whatsoever, except bribery, corruption, and falsehood: Now, if all be excluded except those cases excepted, then the being *ultra vires* will not reduce and annul the decreet-arbitral, *quoad* the articles expressly submitted, and so *intra vires*; else that act of regulation would signify nothing; whereas, decreets-arbitral are the strongest of all sentences proceeding on the parties own consent, and are not regulated by the precise terms of law, but only may be reviewed *quoad* any debordments, as was found, Feb. 20. 1633, L. Athol against the E. of Athol, (see APP. to ARBITRATION), and as transactions, though reduced, as proceeding *super falsis instrumentis*, in one particular, yet subsist *quoad reliqua capita separata*, *l. penult. C. De Transact.* even so in compromits. *Replied*, That the act, making judicial sentences *in foro contradictorio* only null *pro tanto*, and not *pro toto*, is a correctory law, and cannot be extended *de casu in casum*; and a decreet-arbitral is *jus indivisibile*, and so connected, that the loosing of one point makes

No 5.
A decree-arbitral was sought to be reduced upon this head, that it was *ultra vires compromissi*, in so far as the arbiters had decerned the parties to grant mutual general discharges, tho' they had only submitted some particular claims. The Lords rectified this part of the decree, but sustained it *quoad ultra*.